

**OPINION  
77-85**

February 23, 1977            (OPINION)

Mr. Garylle B. Stewart  
Assistant City Attorney  
c/o Office of City Attorney  
Fargo, ND 58102

Dear Mr. Stewart:

This opinion is written in response to your request for an opinion concerning the proper application of Section 57-02-08.1 N.D.C.C. You have stated that your request is made as the result of an inquiry made of your office by an attorney representing several Fargo property owners. Specifically, the facts presented to you are as follows:

A husband and wife who qualify for the homestead credit provisions of Section 57-02-08.1 N.D.C.C. own their homestead in joint tenancy with their son.

The question presented is whether the husband and wife are entitled to the full homestead credit benefits or only a fraction thereof.

The answer to this question depends upon the unknown fact of whether the son who is a joint tenant is a dependent of his parents. Subsection 1 of Section 57-02-08.1 N.D.C.C. provides, in part, that an applicant must include the income of any person dependent upon him when meeting the income test. Thus, if the income, if any, of the dependent son was considered when the husband and wife made application for the homestead credit relief, and they still met the income limitations, the husband and wife could enjoy the full homestead credit. This credit would be equal to that due one qualifying applicant, for Subsection 1 of Section 57-02-08.1 N.D.C.C. also provides, in part, that in no case are a husband and wife both entitled to the homestead credit if they are living together.

If the son who is a joint tenant is not a dependent of his parents, and his parents otherwise qualify for the homestead credit, the credit granted the husband and wife would be reduced by one-third to reflect the interest in the property belonging to the nondependent son.

The reason for this conclusion is twofold:

1. The income of the nondependent son could not be included with the income of the applicants when they met the income test.
2. Because Section 47-02-06 N.D.C.C. provides that a joint tenancy creates interests in equal shares, the nonqualifying interest in the example given would be one-third.

Sincerely,

ALLEN I. OLSON

Attorney General